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**DATE:** 4/23/2008

April 23, 2008

SPECIAL MASTER'S FINAL REPORT

The Honorable Marco Rubio  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: HB 1039 - Representative Lopez-Cantera  
Relief of Gough/Miami-Dade County School Board

**THIS IS A SETTLED EQUITABLE CLAIM FOR \$1,000,000 BASED ON A SETTLEMENT AGREEMENT IN WHICH THE MIAMI-DADE COUNTY SCHOOL BOARD AGREED TO COMPENSATE MARIA AND JORGE GOUGH \$1,700,000 FOR THE DEATH OF THEIR FOURTEEN-YEAR-OLD SON, JAIME GOUGH, AS THE RESULT OF A STABBING BY A FELLOW STUDENT AT SOUTHWOOD MIDDLE SCHOOL.**

FINDING OF FACT:

**The Claim:** Maria and Jorge Gough and the Estate of Jaime Gough are the Claimants in this matter. Maria and Jorge Gough are the parents and natural guardians of Jaime Gough, a minor. Jorge Gough is the personal representative of the Estate of Jaime Gough. Jaime Gough, a 14-year-old student, was fatally stabbed by a classmate at Southwood Middle School in Miami-Dade County on February 3, 2004. The respondent in this claim is the Miami-Dade County School Board. The parties entered into a settlement agreement in this matter prior to going to trial. This is not a contested claim, and the School Board has admitted liability.

**The Incident:** Shortly before 9:00 a.m. on Tuesday, February 3, 2004, Jaime Gough, a 14-year-old gifted

student, was fatally stabbed forty-one times by Michael Hernandez, a 14-year-old gifted student and classmate, in a bathroom at Southwood Middle School in Miami-Dade County, Florida. Michael Hernandez was able to bring the knife onto the school grounds concealed in his book bag. The stabbing occurred prior to the school being officially opened at 9:00 a.m. for students to enter that day. After the stabbing, a student informed a hall monitor that that he saw the legs of a student protruding from a stall in the second floor bathroom, however, the hall monitor did not investigate. The hall monitor did immediately respond when the student returned stating that a dead boy was in the bathroom.

**Foreseeability:** The Claimants argue that several factors demonstrate that the Miami-Dade School Board was on notice that violent crimes occurred in their schools, that there were measures that should have been taken in the schools such as metal detectors, and that they should have known that Michael Hernandez posed a risk to other students. The Claimants also argue that the school should have had better trained security personal and taken additional security measures. The evidence offered in support of these arguments is discussed in the following paragraphs.

School Board Meeting: On October 20, 1999, the Miami-Dade County School Board held a "Conference Session" on school safety. Minutes of this session were provided to the Special Master for consideration. In preparation for the conference session, the School Board had convened a school safety operations committee that conducted surveys, researched literature, identified funding sources and sought the collaboration of different departments. At this session, Mr. Wolfgang Halbig made a presentation regarding safety in schools. Mr. Halbig was Chief of Security for Seminole County and President of the National Institute of School Safety. The minutes reflect that "Mr. Halbig discussed various standards that must be present in order to have safe schools." The standards listed in the minutes are:

- An annual assessment must be conducted on school safety
- Every school must have an emergency

management plan and a comprehensive safe schools program.

- Schools should have a program that identifies troubled children so that they can be helped.

Sworn Testimony: The record includes testimony from a teacher at Southwood Middle School that students had told her that Michael Hernandez had brought a knife “into my classroom last year.” The teacher also stated that students had told her that Michael Hernandez had punched a student and that he did not remember doing this afterwards. However, these statements were made to the teacher long after the alleged incidents may have taken place and were not pursued.

The record includes testimony from a student at Southwood Middle School at the time of the stabbing that Michael Hernandez had visited disturbing websites on the internet in the school’s computer lab. The testimony stated that these websites depicted “dead skeletons and people being hanged and dead people and a baby getting killed.”

Another student testified that the student and Jaime Gough and Michael Hernandez would sneak into the school in the mornings prior to the school officially being opened and that the school’s security guards would not pay attention to them.

Crime Statistics: The Claimants provided uncontested statistics of crimes and other incidents being reported at school campuses in Miami-Dade County. The record shows that each year since 2000, over 20,000 “offenses” have been reported in the Miami-Dade School system. These “offenses” cover a wide variety of reports and incidents, many of which can be considered criminal acts, including hundreds of weapon possession offenses each year. During the 2002-2003 school year, 107 calls for police services were made to Southwood Middle School and over 20 arrests occurred.

**The Settlement Agreement:** On August 17, 2005, the claimants entered into a “Settlement Agreement and Stipulation For Agreed Florida Claim Bill” with the Miami-Dade County School Board and United Educators

Insurance Company as “a full and complete compromise settlement as to all of Claimants’ claims against the School Board...” The agreement did not originally contain an admission of liability by the School Board but has since been amended to admit liability. Pursuant to the agreement, the related civil lawsuit was dismissed. The financial terms of the settlement were for a total of \$1,700,000. The School Board paid \$200,000 immediately to the Claimants and United Insurance Company paid \$500,000 to the Claimants under the terms of an excess coverage insurance policy. The School Board agreed to a claim bill for the payment of the remaining \$1,000,000.

CONCLUSION OF LAW:

A claim bill, whether based on a jury verdict or not, must be measured anew against the four standard elements of negligence: duty, breach of duty, proximate cause, and damages. If, and only if, all four elements are satisfied, can liability be found. While the Miami-Dade County School Board clearly owed a duty of care to Jaime Gough for his safety while at school as provided under the common law and s. 1006.07, F.S., (district school board duties relating to student discipline and school safety) the record does not demonstrate that there was a breach of this duty. Section 1006.07, F.S., provides that the “district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students...”

While the School Board owes a duty of care to its students, the Claimants did not provide expert testimony that established the relevant standard of care or practices applicable to meet this duty of care or that the School Board acted unreasonably. The Claimants failed to meet the burden of proving by the greater weight of the evidence that the alleged action or inaction of the School Board departed from any prevailing standard.

The Claimants argued that the President of the National Institute of School Safety advised the Miami-Dade School Board in 1999 that metal detectors and/or x-ray machines should be installed in schools. The record does reflect some discussion of metal detectors and x-ray machines before the School Board, but the recommendation

appears to be for a pilot project subject to funding by a federal grant that was never received. It may be that this advice was given, but there is no evidence of this advice nor is there evidence that the installation of metal detectors and/or x-ray machines in schools is a standard of care used by schools consistently anywhere else. There are conflicting statements in the record as to the success of metal detectors and x-ray machines at preventing students from getting contraband onto school campuses. One newspaper article provided by the Claimants quoted a national school safety expert as saying, "[i]f you put a metal detector at the doorway, kids know exactly how searches occur and they're going to find a way to beat the system." This expert further stated that "I prefer the roving, random selection approach. It keeps the kids off guard because it's harder for the ones who want to bring weapons to school to detect a pattern and find a way around it." This "roving, random selection approach" appears very similar to the strategy actually employed by the Miami-Dade County School Board. While these are not sworn statements, nor was this expert cross-examined by counsel, they do show that the record does not sufficiently support this line of argument.

The Claimants argued that Michael Hernandez brought a knife to school regularly and that he utilized a screw driver on school grounds to poke students and start a fight. This allegation may be true, but it is not clearly supported by the record and there is not evidence that, if true, the school was aware of this conduct. While one teacher stated that she was told by students that Michael Hernandez had brought a knife to school the year before, this does not sufficiently demonstrate the allegation.

The Claimants argued that Michael Hernandez viewed inappropriate websites in the internet in the computer room at Southwood Middle School. This allegation appears to be true, but there is not evidence that, if true, the school was aware of this conduct. While one student mentioned a single incident that a teacher saw Michael Hernandez visit a gory website, this does not sufficiently demonstrate the allegation for purposes of liability or provide foreseeability for a future stabbing.

The Claimants argued that the Hall Monitors used by

Southwood Middle School were not licensed or properly trained. However, evidence was not submitted that this was a breach of any common standard of security used by schools or that it was negligent.

The Claimants did demonstrate that the Miami-Dade School Board was on notice that weapon offenses and violent acts were likely to occur in their schools. However, the Claimants have not established by a preponderance of evidence that the Miami-Dade School Board or its agents breached their applicable duty of care to Jaime Gough. The outcome of this incident could not be more tragic and will continue to haunt and traumatize Jaime's family, friends, and community. However, based on the record before me, I must find that the Claimants have not met their burden to demonstrate by a preponderance of the evidence that this tragic outcome was the result of negligence by the School Board or its employees. There are many actions in hindsight that may have prevented this tragic incident from occurring, but to find liability on behalf of the School Board, the record must demonstrate all the elements necessary to prove negligence.

**Damages:** In light of the above findings, discussion of damages seems unnecessary. However, should the Legislature make the decision to find the Miami-Dade County School Board responsible for the death of Jaime Gough, the record does support as reasonable damages in the requested amounts of \$1,000,000 for the Claimants.

If any additional funds are awarded to the Goughs through a claim bill to be paid by the Miami-Dade County School Board, the School Board has the assets set aside in its reserve accounts to make payment of this claim in the requested amounts.

ATTORNEY'S/  
LOBBYING FEES:

The attorney for the claimant has provided an affidavit to the effect that his fees will be limited to 25 percent of all gross amounts paid to the Claimants as the result of a claim bill. The affidavit states that all costs, including costs for professional lobbying services, will be borne by the client in addition to the 25% for attorney's fees. The agreed upon lobbying fees for this claim are six percent of any claim bill amount. Outstanding costs are \$3,718.05.

The bill, however, requires that the attorney's fees, lobbyist's fee and costs are limited to no more than 25 percent of the total amount awarded by the Legislature.

LEGISLATIVE HISTORY:

This is the third year that a claim bill has been submitted for Maria Gough and Jorge Gough, as a result of the death of their son, Jaime Gough (see House Bill 1045 and Senate Bill 78 from the 2007 Legislative Session and House Bill 895 and Senate Bill 46 from the 2006 Session).

A joint hearing with the Senate Special Master was held on this claim on December 22, 2006, at the Division of Administrative Hearings, Tallahassee, Florida, and again on December 14, 2007, by videoconference between Tallahassee and Miami, Florida.

In preparation for the 2008 session, both parties have been given the opportunity to supplement the record for this claim.

RECOMMENDATIONS:

Based on the record before me, I find that the Claimants have not met their burden to demonstrate by a preponderance of the evidence that the death of Jaime Gough was caused by any negligent act or omission by the Miami-Dade County School Board or its employees. Therefore, I recommend that this claim bill be reported UNFAVORABLY.

Respectfully submitted,

**TOM THOMAS**  
House Special Master

cc: Representative Lopez-Cantera, House Sponsor  
Representative Wilson, Senate Sponsor  
The Honorable Eleanor Hunter, Senate Special Master